



#10

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

COPY MAILED

Hopgood, Calimafde, Kalil,  
Blaustein & Judlowe  
60 East 42nd Street  
New York, NY 10165

FEB 14 1991

SPECIAL PROGRAM  
EXAMINATION UNIT

In re Application of :  
Francis A. L'Esperance, Jr. :  
Serial No. 06/916,646 : LETTER UNDER 37 CFR 1.28(c)(2)  
Filed: October 8, 1986 :  
Patent No. 4,718,418 :  
Issued Date: January 12, 1988 :  
For: APPARATUS FOR :  
OPHTHALMOLOGICAL SURGERY :

This is in response to the paper filed July 10, 1990, under 37 CFR 1.28(c)(2).

Attention is directed to the Notice, Patent and Trademark Office Implementation of 37 CFR 1.28(d) and 1.56(c), (f) and (g), published at 1098 OG 502 on January 3, 1989. A copy of that Notice is attached. The payment of fee deficiencies under 37 CFR 1.28 has been received pursuant to that Notice and small entity status will no longer apply.

The \$807 payment received relates to a deficiency in the Additional claims and issue fees.

As entitlement to small entity status was lost April 21, 1987, only the small entity issue fee was improperly paid as once small entity status was properly established on filing (October 8, 1986 statement date) continued entitlement to small entity status need not be reviewed until payment of the issue fee.

In that fee deficiencies are to be paid at fee levels existing at the time of payment of the deficiency, the issue fee deficiency was \$340.00 and not the \$280.00 submitted leaving a \$60.00 deficiency. A refund of \$467 (\$807 paid - \$340 owed for the issue fee deficiency) may be requested by separate letter to Finance Branch with a copy of the instant Letter). The deficiency payment cannot currently be accepted absent an appropriate verified statement of facts.

37 CFR 1.28(c)(2) requires a verified statement of facts as to how the error occurred and how and when it was discovered by a party with firsthand knowledge thereof (generally an employee of the party who factually asserted entitlement to small entity

status which is rarely patent counsel).

The patent file will be retained for TWO MONTHS from the mail date of this LETTER to allow for the submission of an appropriate verified statement of facts. Any response should be directed to the undersigned at the Special Program Examination Unit, Office of the Assistant Commissioner for Patents, Crystal Park 2, Suite 923.

*Karen O. Wood*

Karen O. Wood  
Legal Technician  
Office of the A/C for Patents

Conferee: H. Bernstein *H.B.*

Attachment: OG Notice